

DOCKET FILE COPY ORIGINAL

DOCKET FILE COPY ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

NOV 14 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the matter of

Application of BellSouth Corporation, )  
BellSouth Telecommunications, Inc., and )  
BellSouth Long Distance, Inc., for Provision )  
of In-Region, InterLATA Service in the )  
State of South Carolina )

CC Docket  
No. 97-208

REPLY COMMENTS OF AT&T CORP.  
IN OPPOSITION TO BELL SOUTH'S  
SECTION 271 APPLICATION

ATTACHMENTS

November 14, 1997

9810

# **ATTACHMENT A**

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center • 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

October 22, 1997

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF COMMUNICATIONS (AUDU, FOGLEMAN, GREER, MUSSELWHITE, NORTON, SIRIANNI, STAVANJA, WIDELL, WIGGINS)  
DIVISION OF LEGAL SERVICES (BARONE, CULPEPPER, PELLEGRINI)

RE: DOCKET NO. 960786-TL - CONSIDERATION OF BELL SOUTH TELECOMMUNICATIONS INC.'S ENTRY INTO INTERLATA SERVICES PURSUANT TO SECTION 271 OF THE FEDERAL TELECOMMUNICATIONS ACT OF 1996.

AGENDA: NOVEMBER 3, 1997 - SPECIAL AGENDA - POST HEARING DECISION - PARTICIPATION IS LIMITED TO COMMISSIONERS AND STAFF - ISSUE 18A IS A PROPOSED AGENCY ACTION

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\CMU\WP\960786TL.RCM

DOCUMENT NUMBER-DATE

10834 OCT 22 97

FPSC-RECORDS/REPORTING

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

TABLE OF CONTENTS

LIST OF ACRONYMS . . . . .	- 6 -
EXECUTIVE SUMMARY . . . . .	- 10 -
CASE BACKGROUND . . . . .	- 13 -
ISSUE 1A: Has BellSouth met the requirements of Section 271	
(c) (1) (A) of the Telecommunications Act of 1996? (Sirianni)	
(a) Has BellSouth entered into one or more binding	
agreements approved under Section 252 with	
unaffiliated competing providers of telephone	
exchange service?	
(b) Is BellSouth providing access and interconnection	
to its network facilities for the network	
facilities of such competing providers?	
(c) Are such competing providers providing telephone	
exchange service to residential and business	
customers either exclusively over their own	
telephone exchange service facilities or	
predominantly over their own telephone exchange	
service facilities?	
. . . . .	- 16 -
ISSUE 1B: Has BellSouth met the requirements of Section	
271(c) (1) (B) of the Telecommunications Act of 1996?	
(Sirianni)	
(a) Has an unaffiliated competing provider of	
telephone exchange service requested access and	
interconnection with BellSouth?	
(b) Has a statement of terms and conditions that	
BellSouth generally offers to provide access and	
interconnection been approved or permitted to take	
effect under Section 252(f)? . . . . .	- 42 -
ISSUE 1C: Can BellSouth meet the requirements of section	
271(c) (1) through a combination of track A (Section	
271(c) (1) (A) and track B (Section 271(c) (1) (B)? If so, has	
BellSouth met all of the requirements of those sections?	
(Barone) . . . . .	- 51 -

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

ISSUE 2: Has BellSouth provided interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(I) and applicable rules promulgated by the FCC? (Norton) . . . . . - 59 -

ISSUE 3: Has BellSouth provided nondiscriminatory access to network elements in accordance with the requirements of section 251(c)(3) and 252(d)(1) of the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(ii) and applicable rules promulgated by the FCC? (Stavanja) . . . . . - 86 -

ISSUE 3a: Has BellSouth developed performance standards and measurements? If so, are they being met? (Audu) . . - 131 -

ISSUE 4: Has BellSouth provided nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of section 224 of the Communications Act of 1934 as amended by the Telecommunications Act of 1996, pursuant to 271(c)(2)(B)(iii) and applicable rules promulgated by the FCC? (Widell) . . . . . - 151 -

ISSUE 5: Has BellSouth unbundled the local loop transmission between the central office and the customer's premises from local switching or other services, pursuant to section 271(c)(2)(B)(iv) and applicable rules promulgated by the FCC. (Audu) . . . . . - 156 -

ISSUE 6: Has BellSouth unbundled the local transport on the trunk side of a wireline local exchange carrier switch from switching or other services, pursuant to section 271(c)(2)(B)(v) and applicable rules promulgated by the FCC? (Audu) . . . . . - 168 -

ISSUE 7: Has BellSouth provided unbundled local switching from transport, local loop transmission, or other services, pursuant to section 271(c)(2)(B)(vi) and applicable rules promulgated by the FCC? (Audu) . . . . . - 175 -

ISSUE 8: Has BellSouth provided nondiscriminatory access to the following, pursuant to section 271(c)(2)(B)(vii) and applicable rules promulgated by the FCC? (Greer) . . - 184 -

ISSUE 9: Has BellSouth provided white pages directory listings for customers of other telecommunications carrier's telephone exchange service, pursuant to section

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

271(c)(2)(B)(viii) and applicable rules promulgated by the  
FCC? (Musselwhite) . . . . . - 199 -

ISSUE 10: Has BellSouth provided nondiscriminatory access to  
telephone numbers for assignment to the other  
telecommunications carrier's telephone exchange service  
customers, pursuant to section 271(c)(2)(B)(ix) and  
applicable rules promulgated by the FCC? (Wiggins)  
. . . . . - 208 -

ISSUE 11: Has BellSouth provided nondiscriminatory access to  
databases and associated signaling necessary for call  
routing and completion, pursuant to section 271(c)(2)(B)(x)  
and applicable rules promulgated by the FCC? (Fogleman)  
. . . . . - 214 -

ISSUE 12: Has BellSouth provided number portability, pursuant to  
section 271(c)(2)(B)(xi) and applicable rules promulgated by  
the FCC? (Wiggins) . . . . . - 231 -

ISSUE 13: Has BellSouth provided nondiscriminatory access to such  
services or information as are necessary to allow the  
requesting carrier to implement local dialing parity in  
accordance with the requirements of section 251(b)(3) of the  
Telecommunications Act of 1996, pursuant to section  
271(c)(2)(B)(xii) and applicable rules promulgated by the  
FCC? (Sirianni) . . . . . - 242 -

ISSUE 14: Has BellSouth provided reciprocal compensation  
arrangements in accordance with the requirements of section  
252(d)(2) of the Telecommunications Act of 1996, pursuant to  
section 251(c)(2)(B)(xiii) and applicable rules promulgated  
by the FCC? (Norton) . . . . . - 248 -

ISSUE 15: Has BellSouth provided telecommunications services  
available for resale in accordance with the requirements of  
sections 251(c)(4) and 252(d)(3) of the Telecommunications  
Act of 1996, pursuant to section 271(c)(2)(B)(xiv) and  
applicable rules promulgated by the FCC? (Musselwhite)  
. . . . . - 255 -

Issue 15a: Has BellSouth developed performance standards and  
measurements? If so, are they being met? (Audu) . . - 289 -

ISSUE 16: By what date does BellSouth propose to provide  
intraLATA toll dialing parity throughout Florida pursuant to  
section 271(e)(2)(A) of the Telecommunications Act of 1996?  
(Sirianni) . . . . . - 291 -

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

ISSUE 17: If the answer to issues 2-15 is "yes", have those requirements been met in a single agreement or through a combination of agreements? (Greer) . . . . . - 294 -

ISSUE 18: Should this docket be closed? (Greer) . . . . . - 297 -

ISSUE 18A: Should the Commission approve BellSouth's statement of generally available terms and conditions (SGAT) pursuant to Section 252(f) of the 1996 Telecommunications Act? (Siriani) . . . . . - 299 -

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

LIST OF ACRONYMS

ACSI	American Communications Services, Inc., American Communications Services of Jacksonville Inc.
AIN	Advanced Intelligence Network
ALEC	Alternative Local Exchange Carrier
ALI/DMS	Automatic Location Identification/Data Management System
AT&T	AT&T Communications of the Southern States, Inc.
BAPCO	BellSouth Advertising and Publishing Company
BOC	Bell Operating Company
BR	Brief of Evidence
BST/BellSouth	BellSouth Telecommunications, Inc
CABS	Carrier Access Billing System
CGI	Common Gateway Interface
CSR	Customer Service Record
CWA	Communications Workers of America
DA	Directory Assistance
DOE	Direct Order Entry
DOJ	Department of Justice
DSAP	Direct Order Entry Support Application Program
EBI	Electronic Bonding Interface
EC-Lite	



DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

ECG	Electronic Communications Gateway
EDI	Electronic Data Interchange
EDI-PC	
EXACT	Exchange Access Control and Tracking System
EXH	Exhibit
FCC	Federal Communications Commission
FCCA	Florida Competitive Carriers Association
FCTA	Florida Cable Television Association
FID	Field Identifier
FOC	Firm Order Confirmation
FPSC	Florida Public Service Commission
FUEL	FID, USOC, and Edit Library
ICI	Intermedia Communications of Florida, Inc.
ILEC	Incumbent Local Exchange Carrier
ISDN	Integrated Services Digital Network
IXC	Interexchange Carrier
LCSC	Local Carrier Service Center
LENS	Local Exchange Navigation System
LEO	Local Exchange Ordering
LESOG	Local Exchange Service Order Generator
LIDB	Line Information Database

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

LRIC	Long Run Incremental Cost
LSR	Local Service Request
LTR	Local Transport Restructure
MAC	Move, add, or change order
MCI	MCI Metro Access Transmission Services, Inc. & MCI Telecommunications Corporation
MFN	Most Favored Nation
MFS	Metropolitan Fiber Systems of Florida, Inc.
OSS	Operational Support Systems
PCS	Preferred Carrier Services, Inc.
RBOC	Regional Bell Operating Company
RNS	Regional Negotiation System
SCE	Service Creation Environment
SCP	Signaling Control Point
SGAT	8/25/97 - Statement of Generally Available Terms and Conditions
SMS	Service Management System
SOCS	Service Order Control System
SOLAR	Service Order Layout Assembly Routine
SONGS	Service Order Negotiation System
Sprint/SMNI	Sprint Communications Company Limited Partnership/Sprint Metropolitan Network, Inc.
SS7	Signaling System 7
STP	Signaling Transfer Point

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

STS	Shared Tenant Services
TA96/ACT	Telecommunciations Act of 1996
TCAP	Transaction Capability Application Part
TAFI	Trouble Analysis Facilitation Interface
TCG	TCG of South Florida
TELRIC	Total Element Long Run Incremental Cost
Time Warner	Time Warner AxS of Florida, L.P./Time Warner Connect
TR	Transcript
TRA	Telecommunications Resellers Association
TSLRIC	Total Service Long Run Incremental Cost
UNE	Unbundled Network Element
USOC	Uniform Service Order Code
Worldcom	Worldcom, Inc.

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

EXECUTIVE SUMMARY

Issues 1A and 1B address whether BST has met the requirements of Track A and/or Track B under Section 271(c)(1). Staff has recommended that BST has not met the requirements of either track. BST has entered into binding agreements with unaffiliated competing providers; however, competitors are providing service exclusively or predominantly over their own facilities only to business customers, and not to residential customers. In addition, an unaffiliated provider has requested access and a Statement of Generally Available Terms and conditions (SGAT) has not been approved by this Commission.

Issue 1C addresses whether BST can meet the requirements of Section 271(c)(1) through a combination of Tracks A and B, and if so, has it done that. Staff has recommended first that BST cannot meet the requirements through a combination of Tracks A and B, and second, that BST should be permitted to use a state-approved SGAT to show that checklist items are available, but that it is not eligible to do so at this time.

Issues 2 through 15 address the fourteen checklist items specified in Section 271(c)(2)(b) of the Act. Staff's recommendation is that BST has not met all the requirements as contained in the Act.

Specifically, staff has recommended that BST has met the following checklist items:

- Issue 4 - Access to poles, ducts, conduits, and right-of-way;
- Issue 9 - Provision of white pages directory listings for ALEC customers;
- Issue 10 - Access to telephone numbers for assignment to ALEC customers;
- Issue 11 - Access to databases and signalling for call routing and completion;
- Issue 13 - Access to services or information to allow ALECs to implement local dialing parity;

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

Staff has also recommended that BST has not met the remaining checklist items:

- Issue 2 - Facilities-based interconnection, including collocation;
- Issue 3 - Access to unbundled network elements;
- Issue 3a - Performance Standards for unbundled network elements;
- Issue 5 - Unbundled local loop transmission;
- Issue 6 - Unbundled local transport;
- Issue 7 - Unbundled local switching;
- Issue 8 - Access to 911 and E911 services, directory assistance services, and operator call completion services;
- Issue 12 - Number portability;
- Issue 14 - Reciprocal Compensation arrangements;
- Issue 15 - Telecommunications services available for resale;
- Issue 15a - Performance standards for resale services.

Per Issue 16, BST has provided 1+ intraLATA presubscription in its Florida end offices as of March 1997.

If BST had met all the checklist items in Issues 2-15, Issue 17 addresses whether those requirements had been met in a single agreement or through a combination of agreements. This issue is moot since BST has not met all the requirements of the checklist. However, staff has recommended that if BST had met all the requirements, it could have met them through a combination of agreements approved by this Commission.

Issue 18 recommends that this docket remain open.

Issue 18A addresses the approval of the SGAT by the Commission. Staff recommends that the Commission deny BST's SGAT filing as non-compliant with requirements established in Section 251(f) of the Act.

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

SUMMARY OF COMPLIANCE

REQUIREMENTS	PASS	FAIL
Track A (Issue 1C)		✓
Track B (Issue 1B)		✓
Checklist Item (i) (Issue 2)		✓
Checklist Item (ii) (Issue 3)		✓
Checklist Item (iii) (Issue 4)	✓	
Checklist Item (iv) (Issue 5)		✓
Checklist Item (v) (Issue 6)		✓
Checklist Item (vi) (Issue 7)		✓
Checklist Item (vii) (Issue 8)		✓
Checklist Item (viii) (Issue 9)	✓	
Checklist Item (ix) (Issue 10)	✓	
Checklist Item (x) (Issue 11)	✓	
Checklist Item (xi) (Issue 12)		✓
Checklist Item (xii) (Issue 13)	✓	
Checklist Item (xiii) (Issue 14)		✓
Checklist Item (xiv) (Issue 15)		✓

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

#### CASE BACKGROUND

Part II of the Federal Telecommunications Act of 1996 (the Act), P.L. 104-104, 104th Congress 1996, provides for the development of competitive markets in the telecommunications industry. Part III of the Act establishes special provisions for the Bell Operating Companies (BOCs). In particular, BOCs must apply to the FCC for authority to provide interLATA service within their in-region service areas. The FCC, however, must consult with the Attorney General and the applicable state commission before making a determination regarding the BOC's entry into the interLATA market. See Subsections 271(d)(2)(A) and (B). With respect to state commissions, the FCC is to consult with them to verify that the BOC has complied with the requirements of Section 271(c) of the Act.

On June 28, 1996, the FPSC opened this docket to begin to fulfill its consultative role on the eventual application of BellSouth Telecommunications, Inc. The following entities intervened: American Communications Services of Jacksonville, (ACSI); AT&T Communications of the Southern States (AT&T); the Florida Competitive Carriers Association (FCCA); Florida Cable Telecommunications Association (FCTA) Intermedia Communications, Inc. (ICI); MCI Telecommunications Corporation (MCI); Metropolitan Fiber Systems of Florida, Inc., and WorldCom, Inc. (WorldCom); Preferred Carrier Services, Inc., (PCS); Sprint Communications Company Limited Partnership and Sprint Metropolitan Networks, Inc., (Sprint/SMNI); Telecommunications Resellers Association, (TRA); Teleport Communications Group, Inc., (TCG), Time Warner AxS of Florida, L.P. and Digital Media Partners (Time Warner) and the Communications Workers of America (CWA). Eventually, PCS, TRA and Time Warner withdrew from the docket. They, along with CWA, did not file posthearing statements or briefs on the issues.

On July 19, 1996, Order No. PSC-96-0945-PCO-TL, was issued in this docket which set forth a tentative list of issues to be determined in this proceeding. The issues tracked the language of Section 271(c)(1)(A), Track A, 271(c)(1)(B), Track B, and 271(c)(2)(B), also known as the competitive checklist.

On November 13, 1996, AT&T, MCI, WorldCom and FCCA filed a Joint Motion for Advance Notice of Filing. The Movants requested the FPSC to order BellSouth to provide 120 days advance notice to the Commission and the parties in the docket of its intent to apply to the FCC for interLATA authority, and all evidence, including prefiled testimony and exhibits, upon which BellSouth intended to

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

rely in response to the issues identified in Order No. PSC-96-0945-PCO-TL, cited above. BellSouth filed its response in opposition to the Motion on November 21, 1996. The Commission denied the Joint Motion by Order No. PSC-97-0081-FOF-TL, issued on January 27, 1997.

On December 6, 1996, the FCC issued a Public Notice, FCC 96-469, Procedures for Bell Operating Company Applications Under New Section 271 of the Communications Act. In that Notice, the FCC stated that it would require the applicable State Commissions to file its written consultation with the FCC not later than approximately 20 days after the issuance of the Initial Public Notice. The FCC also set out specific requirements for BOC applications.

On May 27, 1997, FCCA, AT&T and MCI filed a Joint Motion For Advance Ruling in BellSouth's Ineligibility for "Track B" and to Delete Portion of Issue 1. BellSouth filed its response in opposition on June 9, 1997. The Commission denied the Motion by Order No. PSC-97-0915-FOF-TL, issued on August 4, 1997.

On June 12, 1997, Order No. PSC-97-0703-PCO-TL, Second Order Establishing Procedure was issued. The Order established the hearing schedule to be followed and required BellSouth to submit specific documentation in support of its Petition which was scheduled to be filed on July 7, 1997. On July 2, 1997, Order No. PSC-97-0792-PCO-TL, Order Modifying Procedural Schedule, was issued. That Order set out additional issues to be addressed.

On July 7, 1997, BellSouth filed its Petition and supporting documentation. BellSouth filed the direct testimony and exhibits of 5 witnesses and a draft Statement of Generally Available Terms and Conditions (SGAT). The intervenor's filed their testimony on September 17, 1997, and all parties filed rebuttal testimony on July 31, 1997.

On July 25, 1997, Time Warner, filed a Motion to Dismiss or in the Alternative for Abatement of BellSouth Telecommunications' Application for InterLATA relief. BellSouth filed its response in opposition to Time Warner's Motion on August 1, 1997. The FPSC denied Time Warner's Motion by Order No. PSC-97-1031-PCO-TL, issued on August 27, 1997.

The hearing on BellSouth's Petition commenced on September 2, 1997, and ended on September 10, 1997. During the hearing, the Commission denied BellSouth's Motion to Reconsider Order No. PSC-97-1038-PCO-TL, granting FCCA's Motion to Compel. The Commission also denied the Joint Motion to Strike the Draft Statement of



DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

Generally Available Terms or in the Alternative Sever the Proceeding filed by FCCA, AT&T, ACSI, WorldCom, MCI and ICI.

At the conclusion of the hearing, BellSouth stated that it would file the final version of the SGAT, which would mirror the draft filed on August 25, 1997, as late-filed exhibit number 125. It also stated that it would file an additional copy of the final version to begin the 60 day review process contemplated by Section 252(f) of the Act. The Commission notified the parties that the late-filed hearing exhibits would come in subject to objection. On September 11, 1997, BellSouth filed late-filed exhibit number 125. On September 17, 1997, AT&T filed its objection to exhibit 125 stating that it did not mirror the August 25, 1997 version. BellSouth responded by filing another version of late-filed exhibit 125 on September 18, 1997. This version did mirror the August 25, 1997 draft. FCTA, however, objected to this version in its brief. Since late-filed exhibit 125 was objected to, it is not a part of the record. Further, the final version was filed after the conclusion of the hearing. Therefore, staff only considered the draft SGAT filed on August 25, 1997, in issues 2-15. When BellSouth filed the final version on September 18, 1997, however, the 60 day review period contemplated by Section 252(f) of the Act began. Therefore, staff has included its recommendation on the final version in this recommendation. The Commission's action on this matter, however, will be proposed agency action since, as discussed above, the final version has not been entered into the record of this proceeding.

Having considered the evidence presented at hearing and the posthearing briefs of the parties, staff's recommendations on whether BellSouth has met the requirements of Section 271(c) and set forth herein. In addition, staff's recommendation on whether BellSouth's SGAT complies with section 252(f) of the Act is contained in issue 18(a).

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

DISCUSSION OF ISSUES

ISSUE 1A: Has BellSouth met the requirements of Section 271 (c) (1) (A) of the Telecommunications Act of 1996? (Siriani)

- (a) Has BellSouth entered into one or more binding agreements approved under Section 252 with unaffiliated competing providers of telephone exchange service?
- (b) Is BellSouth providing access and interconnection to its network facilities for the network facilities of such competing providers?
- (c) Are such competing providers providing telephone exchange service to residential and business customers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities?

RECOMMENDATION: No. BellSouth has not met the requirements of Section 271(c) (1) (A).

- (a) Yes. BellSouth has entered into one or more binding agreements approved under Section 252 with unaffiliated competing providers of telephone exchange service.
- (b) No. While BellSouth is providing access and interconnection to competing providers of business service, it is not providing access and interconnection to competing providers of residential service.
- (c) No. Competing providers are providing telephone exchange service to business customers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities; however, competing providers are not providing telephone exchange service to residential customers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities.

POSITION OF THE PARTIES

ACSI: No. ACSI and BellSouth have an interconnection agreement but BellSouth is not yet providing access and interconnection pursuant to this agreement. ACSI is currently offering services as a reseller.

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

AT&T: No. Although Section 271(c)(1)(A) (Track A) is the appropriate avenue under which BellSouth must apply for interLATA authority, it cannot meet Track A requirements at this time because it is not providing access and interconnection to "one or more unaffiliated competing providers of telephone exchange service to residential and business subscribers" who provide service to both residential and business subscribers exclusively or predominantly over their own facilities.

1(A)(a): Yes. BellSouth has entered into arbitrated agreements with AT&T and MCI among others. Thus, Track A is the appropriate avenue for BellSouth's eventual 271 application, and Track B is closed to BellSouth.

1(A)(b): No. BellSouth is providing very limited access and interconnection to some carriers with whom it has interconnection and resale agreements, but such providers are not "competing providers" as defined in the Ameritech Order because there is no "actual commercial alternative" to BellSouth. Further, by failing to state with specificity the agreements upon which it relies to meet this requirements, BellSouth has failed to meet its burden of proving compliance with this requirement.

1(A)(c): No. The record shows that no ALECs are providing telephone exchange service to residential customers exclusively or predominantly over their own telephone exchange service, although some ALECs provide residential service via resale and some ALECs provide service to business customers exclusively or predominantly over their own facilities.

BST: Yes. However, this Commission need not reach a conclusion as to whether BellSouth should file its application with the FCC pursuant to Track A or B. Instead, this Commission should develop as complete a factual record as possible to allow the FCC to consider which Track is appropriate. Nevertheless, BellSouth believes that Track A has been met.

1(A)(a,b,c): Yes. (a) BellSouth has entered into a number of binding agreements approved under Section 252 with unaffiliated competing providers; (b) BellSouth is providing access and interconnection to competitive providers that are providing service to residential and business customers.

FCCA: No. The evidence in this proceeding demonstrates that BellSouth has not met the requirements of Track A. For example, BellSouth has not provided nondiscriminatory access to network elements and combinations of network elements. BellSouth is not appropriately provisioning resale and BellSouth does not have in

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

place OSS systems that provide new entrants with parity. See Issues 3, 7, 13, 15.

1(A)(a): Yes. BellSouth has acknowledged that it has received "qualifying" requests.

1(A)(b): Though BellSouth is providing some interconnection, it is primarily on a small test basis which has identified numerous problems. This does not meet the Act's requirements.

1(A)(c): Though a tiny amount of service is being provided, as the testimony demonstrated, it is on a test basis with many problems.

**FCTA:**

1(A)(a): Yes. BellSouth has entered into one or more binding agreements approved under Section 252 with unaffiliated providers.

1(A)(b): No. BellSouth is not providing access and interconnection to its network facilities for the network facilities of such competing providers according to the Act's requirements.

1(A)(c): No. BellSouth has failed to demonstrate that there are qualified competing providers of business and residential local exchange service in Florida.

**ICI:** No, BellSouth has not met the requirements of Section 271(c)(1)(A), although this is the only avenue available to it. The 1996 Act requires meaningful facilities-based competition for business and residential customers. BellSouth has not demonstrated that there currently exist in Florida competing providers of telephone exchange service providing service to both residential and business customers either exclusively over their own facilities or predominantly over their own facilities in combination with resale.

1(A)(a): Yes, BellSouth has entered into one or more binding agreements approved under Section 251 with unaffiliated competing providers of telephone exchange service in Florida.

1(A)(b): BellSouth is providing some level of access and interconnection to its network facilities for the network facilities of such competing providers, but the level of access and interconnection being provided is not sufficient to satisfy the requirements of the 1996 Act.

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

1(A)(c): No competing provider or providers of telephone exchange service are now providing such service to residential and business customers, either exclusively or predominantly over their own telephone exchange service facilities. The 1996 Act and the FCC's *Ameritech* Order require that business and residential customers be served by one or more qualifying facilities-based providers. The services being provided by the competing provider(s) must be, among other things, significant and geographically dispersed.

MCI: No.

1(A)(a): Yes. BellSouth has entered into an agreement approved under Section 252 with MCI, which plans to offer both business and residential service either exclusively or predominantly over its own facilities. BellSouth has also entered into agreements with numerous other ALECs.

1(A)(b): BellSouth is providing access and interconnection to MCI, but not in compliance with the MCI/BellSouth Interconnection Agreement or the Act.

1(A)(c): MCI is not providing telephone exchange service to both residential and business customers either exclusively over its own telephone exchange service facilities or predominantly over its own telephone exchange service facilities. The record is unclear as to whether any other ALEC is providing such service.

MFS/WorldCom: No. While BellSouth has entered into numerous interconnection agreements that have been approved by this Commission under the Act, BellSouth has failed to fulfill all of the requirements of Track A due to the failure to meet all of the requirements of the 14-point competitive checklist (Issues 2-15).

1(A)(a): Yes.

1(A)(b): No. As is reflected by the evidence associated with the individual checklist items (Issues 2-15), BellSouth has failed to provide to competing carriers the access and interconnection to its network facilities that is required by the Act.

1(A)(c): No, WorldCom is not providing telephone exchange service to residential or business customers at this time. Other carriers have taken limited market entry steps that do not meet this statutory requirement.

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

Sprint:

1(A)(a): Yes. BellSouth has entered into agreements approved under Section 252 with unaffiliated competing providers of telephone exchange service.

1(A)(b): No. BellSouth is not providing access and interconnection to its network facilities for the network facilities of such competing providers. The Act is clear that the BOC must be actually providing access and interconnection to an unaffiliated company. The mere existence of an agreement to provide such is insufficient. Further, if the BOC is actually providing access and interconnection to an unaffiliated company, the Act then sets forth criteria in Section 271(c)(2)(B) outlining the terms and conditions under which such access and interconnection is to be provided.

1(A)(c): Sprint/SMNI is without sufficient knowledge, information or belief to state a position.

TCG:

1(A)(a): Yes

1(A)(b): No. BellSouth does not provide nondiscriminatory access and interconnection for competing providers in conformance with Section 251(c)(2)(C).

1(A)(c): TCG provides wholesale local exchange service to resellers, some of whom in turn provide service to residential subscribers over TCG's facilities. TCG generally offers service to business subscribers.

STAFF ANALYSIS:

INTERPRETATION OF SECTION 271 REQUIREMENTS

SECTION 271 REQUIREMENTS

The provision of in-region interLATA services by a BOC is based on compliance with certain provisions of Section 271 of the Telecommunications Act of 1996 (Act). Ultimately, the BOCs must apply to the FCC for authorization to provide interLATA services originating in any in-region state. However, in acting on a BOC's application for authority to provide in-region interLATA services, the FCC must consult with the applicable state commission to verify that the BOC has either a state-approved interconnection agreement

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

or statement of generally available terms and conditions (SGAT) that satisfies the "competitive checklist."

Section 271 requires that several findings be made before approval of BOC entry into the interLATA market is granted. The BOC must first show that it satisfies the requirements of either Section 271(c)(1)(A) (Track A) or Section 271(c)(1)(B) (Track B).

Section 271(c)(1)(A) requires that a BOC demonstrate that it has entered into one or more binding agreements that have been approved under Section 252. Section 252 of the Act describes the procedures for negotiation, arbitration, and approval of agreements, including pricing standards. The approved agreements under Section 252 must specify the terms and conditions under which the company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service to residential and business subscribers. Such exchange service may be offered by such competing providers exclusively over their own facilities or predominantly over their own facilities in combination with resale.

#### FCC'S INTERPRETATION OF SECTION 271 REQUIREMENTS

In response to Ameritech's 271 application for authorization to provide in-region, interLATA services in the State of Michigan, the FCC issued Order FCC 97-298 on August 19, 1997 (Ameritech). (EXH 1) While the application was denied, the FCC found that Ameritech had met the requirements of Section 271(c)(1)(A). In the Ameritech decision, the FCC stated that the ultimate burden of proof with respect to factual issues remains at all times with the BOC, even if no party opposes the BOC's application. (EXH 1, FCC 97-298, ¶43) The FCC also clarified five areas relating to the requirements of Section 271(c)(1)(A).

1. The requirement of a "binding agreement" does not preclude consideration of agreements that contain only "interim" prices. (EXH 1, FCC 97-298, ¶72)
2. The word "competing" within the phrase "unaffiliated competing provider" does not require any specified level of geographic penetration or market share by a competing provider. Rather, all that is required is that the provider serve more than a *de minimus* number of end users for a fee. (EXH 1, FCC 97-298, ¶76-78)
3. When a BOC relies upon more than one competing provider to satisfy Track A, each such carrier need not provide service to both residential and business customers. This aspect of Track

DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

A may be satisfied if multiple carriers collectively serve residential and business customers. (EXH 1, FCC 97-298, ¶82)

4. Unbundled network elements purchased by a competing provider from the BOC are considered such provider's "own facilities." (EXH 1, FCC 97-298, ¶101)
5. The word "providing" as used in Track A means actually furnishing the item, or making the item available "both as a legal matter (i.e., contractually through complete terms in binding approved interconnection agreements that comply with applicable legal requirements) as well as a practical matter (i.e., the BOC must stand ready to fulfill a competitor's request on demand)" if no competing provider has requested or ordered the item. In particular, "the BOC must demonstrate that it is presently ready to furnish each checklist item in the quantities that competitors may reasonably demand and at an acceptable level of quality." (EXH 1, FCC 97-298, ¶109-111)

#### FPSC'S INTERPRETATION OF SECTION 271 REQUIREMENTS

On May 27, 1997, FCCA, AT&T and MCI filed a Joint Motion for Advance Ruling on BellSouth's Ineligibility for "Track B" and to Delete a Portion of Issue 1. They also filed a Request for Oral argument on the Motion. BellSouth filed a response in opposition to this Motion on June 9, 1997.

On June 26, 1997, the FCC issued its Memorandum Opinion and Order in CC Docket No. 97-121 (FCC Order) wherein it denied the application of SBC Communications Inc., (SBC) for interLATA authority. The FCC specifically addressed the requirements of Track A and Track B in its Order. On June 30, 1997, the parties filed a Request for Official Recognition of the FCC's Order.

Pursuant to Order No. PSC-97-0915-FOF-TL, issued August 4, 1997, the Commission granted the parties request for Official Recognition of Order No. FCC 97-228 and denied the Motion for Advance Ruling on BellSouth's Ineligibility for "Track B" and to Delete a Portion of Issue 1.

#### SUMMARY OF REQUIREMENTS BEING USED FOR THIS ISSUE

Staff generally agrees with the FCC's interpretation of the requirements of Section 271(c)(1)(A). Our determination of BST's compliance with Section 271(c)(1)(A) is based on the 1996 Act and the subsequent FCC orders which staff believes are consistent with the intentions of the Act. Although the FCC determined that a



DOCKET NO. 960786-TL  
DATE: OCTOBER 22, 1997

specified level of geographic penetration or market share is not required by the Act, the FCC concluded that a competing provider is required to serve more than a *de minimus* number of end users. Staff does not necessarily disagree with the FCC on this point; however, staff is uncertain as to what constitutes a "de minimus" number of end users. Thus, staff is unable to incorporate this standard as a requirement in this proceeding.

In order for BellSouth to meet the requirements of Section 271(c)(1)(A), it must satisfy each element found in that subparagraph. Staff believes that Section 271(c)(1)(A) specifies that a BOC meets the requirements of this subparagraph if it:

1. has entered into one or more binding agreements
2. that have been approved under Section 252, specifying the terms and conditions under which
3. the company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service
4. to residential and business subscribers for a fee, and
5. which service is offered either over the competitors' own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.

Staff agrees with the FCC that the burden of proof with respect to each of these requirements remains at all times with BST. Moreover, based on the requirements of Act and the Joint Conference Committee Report, staff believes that a competing carrier must actually be operational, with carriers accepting requests for service and providing that service for a fee. Staff believes that it could be argued that the provision of access and interconnection to one residential customer and one business customer satisfies the requirement of Section 271(c)(1)(A); however, staff does not believe that is the intent of the Act. Staff believes that a competitive alternative should be operational and offering a competitive service to residential and business subscribers somewhere in the state. In addition, staff believes that the competitor must offer a true "dialtone" alternative within the state, and not merely offer service in one business location that has an incidental, insignificant residential presence.